

United States District Court
Eastern District of California

Tony D. Campbell,
Plaintiff,
vs.
K. Jones,
Defendant.

No. Civ. S 05-0070 DFL PAN P
Findings and Recommendations

-oOo-

November 18, 2005, I gave plaintiff 20 days to explain in writing how the facts alleged in his complaint place him "under imminent danger of serious physical injury" and warned him that failure so to do would result in a recommendation his request for leave to proceed in forma pauperis be denied. Plaintiff has responded.

Plaintiff's alleges that October 26, 2004, plaintiff injured his thumb and medical staff examined it but waited 30 days to take x-rays.

1 Neither past injury nor the possibility future injury
2 satisfies 28 U.S.C. § 1915(g). See Malik v. McGinnis, 293 F.3d
3 559, 562 (2nd Cir. 2002); Abdul-Akbar v. McKelvie, 239 F.3d 307,
4 313 (3d Cir. 2001); Ashley v. Dilworth, 147 F.3d 715 (8th Cir.
5 1998). Petitioner does not allege he presently is in severe
6 pain.

7 Accordingly, I find plaintiff has failed to demonstrate he
8 is entitled to proceed in forma pauperis despite his litigation
9 history.

10 The court should deny plaintiff's January 11, 2005,
11 application to proceed in forma pauperis and direct the clerk of
12 the court to close this file.

13 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these
14 findings and recommendations are submitted to the United States
15 District Judge assigned to this case. Written objections may be
16 filed within 20 days of service of these findings and
17 recommendations. The document should be captioned "Objections to
18 Magistrate Judge's Findings and Recommendations." The district
19 judge may accept, reject, or modify these findings and
20 recommendations in whole or in part.

21 Dated: January 5, 2006.

22 /s/ Peter A. Nowinski
23 PETER A. NOWINSKI
24 Magistrate Judge
25
26